

## **BEFORE THE DIVISION OF INSURANCE**

### **STATE OF COLORADO**

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#### **FINAL AGENCY ORDER O-03-329**

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### **IN THE MATTER OF THE MARKET CONDUCT EXAMINATION OF EVERGREEN NATIONAL INDEMNITY COMPANY,**

#### **Respondent**

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**THIS MATTER** comes before the Colorado Commissioner of Insurance (the "Commissioner") as a result of a market conduct examination conducted by the Colorado Division of Insurance (the "Division") of Evergreen National Indemnity Company (the "Respondent"), pursuant to §§ 10-1-201 to 207, C.R.S. The Commissioner has considered and reviewed the market conduct examination report dated March 21, 2003 (the "Report"), relevant examiner work papers, all written submissions and rebuttals, and the recommendations of staff. The Commissioner finds and orders as follows:

#### **FINDINGS OF FACT**

1. At all relevant times, the Respondent was a corporation licensed by the Division to conduct all lines of property and casualty insurance including bail bonds.
2. In accordance with §§ 10-1-201 to 207, C.R.S., on March 21, 2003, the Division completed a market conduct examination of the Respondent. The period of examination was January 1, 2002, to December 31, 2002.
3. In scheduling the market conduct examination and in determining its nature and scope, the Commissioner considered such matters as complaint analyses, underwriting and claims practices, pricing, product solicitation, policy form compliance, market share analyses, and other criteria as set forth in the most recent available edition of the examiners' handbook adopted by the National Association of Insurance Commissioners, as required by § 10-1-203(1), C.R.S.
4. In conducting the examination, the examiners observed those guidelines and procedures set forth in the most recent available edition of the examiners' handbook adopted by the National Association of Insurance Commissioners and the Colorado insurance examiners handbook. The Commissioner also employed other guidelines and procedures that he deemed appropriate, pursuant to § 10-1-

204(1), C.R.S.

5. The market conduct examiners prepared the Report. The Report is comprised of only the facts appearing upon the books, records, or other documents of the Respondent, its agents or other persons examined, or as ascertained from the testimony of the Respondent's officers or agents or other persons examined concerning Respondent's affairs. The Report contains the conclusions and recommendations that the examiners find reasonably warranted based upon the facts.
6. Respondent delivered to the Division written submissions and rebuttals to the Report.
7. The Commissioner has fully considered and reviewed the Report, all of Respondent's submissions and rebuttals, and all relevant portions of the examiner's work papers.

#### **CONCLUSIONS OF LAW AND ORDER**

8. Unless expressly modified in this final agency order (the "Order"), the Commissioner adopts the facts, conclusions and recommendations contained in the Report. A copy of the Report is attached to the Order and is incorporated by reference.
9. Issue A concerns the following violation: Failure to adequately monitor producers' activities. The Respondent shall review, revise and implement procedures relating to monitoring its agents' and producers' activities to ensure compliance with Colorado insurance law. The Division's records indicate that the Respondent has complied with the corrective actions ordered concerning this violation.
10. Issue B concerns the following violation: Failure to comply with agent reporting requirements to the Division. The Respondent shall review, revise and implement procedures relating to monitoring agent reporting requirements to ensure compliance with Colorado insurance law. The Division's records indicate that the Respondent has complied with the corrective actions ordered concerning this violation. Respondent shall perform a self-audit of agent reporting as it relates to this violation for the time period beginning October 1, 2003 through December 31, 2003. Respondent shall submit a summary of the findings to the Division on or before April 1, 2004.
11. Issue C concerns the following violation: Failure of agents to sign and/or maintain bonding agreements as required. The Respondent shall implement procedures to ensure that agents sign and/or maintain bonding agreements in compliance with Colorado insurance law. The Division's records indicate that the Respondent has complied with the corrective actions ordered concerning this violation. Respondent

shall perform a self-audit of agent bonding agreements as they relate to this violation for the time period beginning October 1, 2003 through December 31, 2003. Respondent shall submit a summary of the findings to the Division on or before April 1, 2004.

12. Issue D concerns the following violation: Failure of agents to return collateral within ten (10) working days. The Respondent shall review, revise and implement procedures relating to return of collateral within ten (10) business days to ensure compliance with Colorado insurance law. The Division's records indicate that the Respondent has complied with the corrective actions ordered concerning this violation. Respondent shall perform a self-audit of agent return of collateral as it relates to this violation for the time period beginning October 1, 2003 through December 31, 2003. Respondent shall submit a summary of the findings to the Division on or before April 1, 2004.
13. Issue E concerns the following violation: Failure of agents to report proper premium to Respondent. The Respondent shall review, revise and implement procedures relating to the accuracy of premium reporting by agents to ensure compliance with Colorado insurance law. The Division's records indicate that the Respondent has complied with the corrective actions ordered concerning this violation. Respondent shall perform a self-audit of proper premium reporting by agents as it relates to this violation for the time period beginning October 1, 2003 through December 31, 2003. Respondent shall submit a summary of the findings to the Division on or before April 1, 2004.
14. Issue F concerns the following violation: Failure of the agent to provide an accurate list of collateral to Respondent. The Respondent shall review, revise and implement procedures to ensure that its agents provide collateral lists to ensure compliance with Colorado insurance law. The Division's records indicate that the Respondent has complied with the corrective actions ordered concerning this violation. Respondent shall perform a self-audit of collateral reporting by agents as it relates to this violation for the time period beginning October 1, 2003 through December 31, 2003. Respondent shall submit a summary of the findings to the Division on or before April 1, 2004.
15. Issue G concerns the following violation: Failure to register assumed (trade) name with the Division. The Respondent shall review, revise and implement procedures relating to the registry of assumed (trade) names with the Division to ensure compliance with Colorado insurance law. The Division's records indicate that the Respondent has complied with the corrective actions ordered concerning this violation. Respondent shall perform a self-audit of registering assumed (trade) names by agents as it relates to this violation for the time period beginning October 1, 2003 through December 31, 2003. Respondent shall submit a summary of the findings to the Division on or before April 1, 2004.

16. Pursuant to § 10-1-205(3)(d), C.R.S., Respondent shall pay a civil penalty to the Division in the amount of sixteen thousand and 00/100 dollars (\$16,000.00) for the cited violations of Colorado law. This fine was calculated in accordance with Division guidelines for assessing penalties and fines, including Division bulletin no. 1-98, issued on January 1, 1998.
17. Pursuant to § 10-1-205(4)(a), C.R.S., within sixty (60) days of the date of this Order, the Respondent shall file affidavits executed by each of its directors stating under oath that they have received a copy of the adopted report and related orders.
18. Unless otherwise specified in this Order, all requirements with this Order shall be completed within thirty (30) days of the date of this Order. Respondent shall submit written evidence of compliance with all requirements to the Division within the thirty (30) day time frame, except where Respondent has already complied, as specifically noted in the Order. Copies of any rate and form filings shall be provided to the rate and forms section with evidence of the filings sent to the market conduct section. Unless otherwise specified in this Order, all audit reports must be received within ninety (90) days of the Order, with a summary of the findings, including all monetary payments to covered persons.
19. This Order shall not prevent the Division from commencing future agency action relating to conduct of the Respondent not specifically addressed in the Report, not resolved according to the terms and conditions in this Order, or occurring before or after the examination period. Failure by the Respondent to comply with the terms of this Order may result in additional actions, penalties and sanctions as provided for by law.
20. Copies of the examination report, the Respondent's response, and this final Order will be made available to the public no earlier than thirty (30) days after the date of this Order, subject to the requirements of § 10-1-205, C.R.S.

**WHEREFORE:** It is hereby ordered that the findings and conclusions contained in the final examination report dated March 21, 2003, are hereby adopted and filed and made an official record of this office and the above Order is hereby approved this 27th day of June, 2003.



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Doug Dean  
Commissioner of Insurance